

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's 2nd Filing to Implement) **File No. EO-2015-0055**
Regulatory Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA)

SIERRA CLUB'S POST-HEARING REPLY BRIEF

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I. INTRODUCTION

As the record in this case makes clear, the benefits of cost-effective energy efficiency are significant, diverse, and increasingly important in light of the risk and cost of traditional fossil fuel-fired generation. Indeed, “reduc[ing] the need to invest in energy production infrastructure”¹ is an underlying objective of the Missouri Energy Efficiency Investment Act (“MEEIA”). To that end, MEEIA requires, among other things, that the Commission permit approved energy efficiency programs that have “a goal of achieving all cost-effective demand-side savings,” and associated cost recovery.² The evidence presented in Sierra Club’s and other parties’ initial briefs demonstrates that Ameren’s three-year energy efficiency plan (“Cycle 2 Plan” or “Plan”)—both as filed and as modified by the Utility Stipulation—falls short. The Non-Utility Stipulation provides a process by which Ameren can work to increase its savings levels and satisfy MEEIA’s objectives.

The Commission has numerous briefs and a lengthy record before it concerning Ameren’s Cycle 2 Plan and the complex, technical issues it raises. However, as Sierra Club explained in its initial brief, no party is asking the Commission to approve the plan Ameren initially proposed, which would have cut energy savings by nearly half. This case is entirely about how to modify Ameren’s flawed plan so that it meets the requirements of MEEIA for the benefit of customers. Through the Utility Stipulation, Ameren maintains cuts to its energy savings, relative to its current MEEIA cycle. In light of the low levels of savings currently on the table, establishing a process to reassess underlying assumptions that have constrained efficiency and overall savings levels is critical. The Non-Utility Stipulation provides for such a process. Specifically, the expert-driven and collaborative processes outlined in the Non-Utility

¹ *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, 320 P.U.R. 4th 330 *20 (Apr. 29, 2015).

² § 393.1075.4, R.S.Mo.

Stipulation, which allow Ameren to work toward increased energy savings in 2017-2018 while continuing the programs in 2016, offer the best path forward for Ameren to achieve MEEIA's goal of all cost-effective demand-side savings. For this reason, Sierra Club continues to recommend that the Commission modify Ameren's Cycle 2 Plan to provide a pathway to increase savings in furtherance of all cost-effective demand-side savings, in accordance with provisions in the Non-Utility Stipulation.

Some parties have suggested in their initial briefs—either implicitly or explicitly—that the Commission lacks authority to modify a MEEIA plan in any way that differs from what Ameren proposes. This is incorrect. The Commission may adopt modifications, including modifications contained in the Non-Utility Stipulation, and Ameren can decide whether to accept them. Further, while both non-unanimous stipulations offer a set of proposed modifications, the Commission is not limited to choosing either set.

Sierra Club strongly supports continued investment in energy efficiency resources, even if the Commission modifies Ameren's Plan in a way that differs from the Non-Utility Stipulation. If this occurs, Sierra Club recommends that the Commission include in its suite of modifications a process by which Ameren can increase its savings by reassessing its goals and underlying analyses, as the Non-Utility Stipulation provides.

II. ARGUMENT

A. The Commission has the authority to modify Ameren's Cycle 2 Plan.

Under MEEIA, the Commission has the authority to approve demand-side programs and cost recovery mechanisms. This authority includes approving modifications to program plans and demand-side investment mechanisms ("DSIMs"). MEEIA provides that the Commission must permit utilities, like Ameren, to "implement commission-approved demand-side programs

proposed pursuant to [MEEIA] with a goal of achieving all cost-effective demand-side savings.”³ The Commission can also permit cost recovery if the programs are commission-approved, result in energy or demand savings, and are beneficial to all customers in the relevant customer class.⁴ MEEIA further directs the Commission to provide for the following “in support of the State’s demand-side investment policy”⁵: (i) timely cost recovery; (ii) alignment of utility financial incentives with helping customers use energy more efficiently and in a manner that sustains or enhances customers’ incentives to use energy in this way; and (iii) timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.⁶ Thus, under MEEIA, the Commission has the authority and obligation to approve programs and cost recovery mechanisms that fulfill the statute’s requirements.

The MEEIA rules detail how the Commission must handle applications for approval of programs plans⁷ and to establish, continue, or modify a DSIM.⁸ The Commission must approve, approve with modifications acceptable to the utility, or reject a proposed demand-side program plan, pursuant to the standards outlined in the rule, including consistency with a goal of achieving all cost-effective demand-side savings for which the Commission has savings guidelines.⁹ With regard to DSIMs, both the utility and Commission have the authority to approve, accept, or reject any proposal to establish, continue, or modify a DSIM or any proposed alternative DSIM.¹⁰

³ 393.1075.4 RSMo.

⁴ *Id.*

⁵ *State ex rel. Pub. Counsel v. Pub. Serv. Comm’n of State*, 397 S.W.3d 441, 444 (Mo. Ct. App. 2013).

⁶ 393.1075.3 RSMo.

⁷ “Demand-side program plan” is defined as a “particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget.” 4 CSR 240-20.094(1)(K).

⁸ See 4 CSR 240-20.094(3) and 4 CSR 240-20.093(2), respectively.

⁹ 4 CSR 240-20.094(2), (3).

¹⁰ 4 CSR 240-20.093(2)(B); see also 4 CSR 240-20.094(3)(E).

The Commission cannot require a utility to offer demand-side programs under MEEIA.¹¹ Moreover, any modification the Commission makes to a proposed demand-side plan under MEEIA must ultimately be accepted by the utility if it is to be implemented. However, the fact that Ameren can opt not to implement a modified MEEIA plan does not mean that the Commission in this case is limited to only those modifications sponsored by Ameren, as some parties contend.¹²

First, although Ameren filed an objection to the Non-Utility Stipulation, a major point of disagreement between Staff and Ameren regarding the most contentious part of the case—the throughput disincentive mechanism—now appears to be resolvable.¹³ Second, given the prudence of investing in energy efficiency¹⁴ and the likely role efficiency will play in Clean Power Plan compliance,¹⁵ as recognized by Ameren, it is important to explore all modifications to establish a workable plan that is consistent with and demonstrates progress toward the goal of achieving all cost-effective demand-side savings. Finally, the two non-binding joint positions¹⁶ put forward in this case do not represent an all-or-nothing choice for the Commission. The Commission has the authority to modify a proposed plan, as necessary, to ensure that it is consistent with MEEIA. As explained in its initial brief, Sierra Club strongly supports continued investment in energy efficiency resources and believes that Ameren’s efficiency programs

¹¹ See *State ex rel. Pub. Counsel*, 397 S.W.3d at 456.

¹² See, e.g., Missouri Division of Energy’s (“DE”) Initial Br. at 4.

¹³ Staff agrees with the Company on the “rebasement to zero” issue. Sierra Club’s Initial Br. at 2, n.2; see also Tr. at 27:20-24, 76:6-10, and 799:25-800:5. Ameren notes that any resolution of this issue has not been reflected in an amended stipulation, Ameren’s Initial Br. at 8, n.18, but an amended stipulation is not needed given that the stipulation reflects a nonbinding position.

¹⁴ Tr. at 503:18-21 (Ameren witness Barnes testifying); see also *id.* at 419:1-4 (Woolf testifying to the same).

¹⁵ Exhibit No. 104, Surrebuttal Testimony of S. Hande Berk, at 13 (“[E]nergy efficiency will almost certainly be part of [the Clean Power Plan] compliance plan. Whatever shape or form the final rule takes, if we do not include cost effective energy efficiency programs as part of our plan, it is quite probable that the cost of compliance to our customers will be higher.”).

¹⁶ See 4 CSR 240-2.115(2)(D) (providing non-unanimous stipulations to which timely objections have been made “shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it”).

should continue even if the Commission approves a modified plan that differs in some ways from the Non-Utility Stipulation. Under this scenario, Sierra Club urges the Commission to include in its suite of modifications the outlined expert-based process to provide a pathway to increased savings in 2017 and 2018.

B. The savings levels in the stipulations are too low, and the expert-driven process outlined in the Non-Utility Stipulation presents the best path forward to increase savings in Cycle 2.

In its initial brief, Ameren stated that it “materially modified its Plan” by, among other things, increasing its energy targets by 37%.¹⁷ Other parties supporting the Utility Stipulation also highlight the increase in overall savings from Ameren’s initial filing and assert that it reflects progress toward achieving all cost-effective demand-side savings.¹⁸

The savings levels proposed in the Utility Stipulation (and the Non-Utility Stipulation) remain too low. As Sierra Club explained in its initial brief, while Ameren frames its modifications as including a 37% increase in savings, what the Company actually proposes is a roughly 25% cut in planned savings compared to Cycle 1, which falls substantially short of the Commission’s MEEIA savings guidelines.¹⁹ The modified savings levels are based in large part on Ameren’s 2013 potential study, IRP, and program planning analyses, all of which understate the level of achievable savings.²⁰ As Sierra Club witness Tim Woolf testified: “In each of its efficiency analyses, especially the Potential Study and the 2014 IRP, Ameren makes several

¹⁷ Ameren’s Initial Br. at 1; *see also id.* at 13-15.

¹⁸ *See* DE’s Initial Br. at 6 and Natural Resources Defense Council’s (“NRDC”) Initial Br. at 4-5.

¹⁹ Sierra Club’s Initial Br. at 11; 4 CSR 240-20.094(2) (providing annual savings goals of 1.1-1.5% of total annual energy during Cycle 2).

²⁰ Missouri Industrial Energy Consumers (“MIEC”) argues that Ameren’s portfolio should be judged by the realistically achievable potential (“RAP”). MIEC Initial Br. at 2-3. However, as Mr. Woolf explained, the methodology Ameren used to define and determine the RAP and maximum achievable potential (“MAP”) portfolios significantly understates the range of achievable potentials, largely due to participation rate assumptions; Ameren’s own analysis showed that the MAP IRP scenario would lower electricity costs as compared to RAP; and Ameren selected the RAP portfolio based on unreasonable cost and risk assumptions. Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 22:1-28:13, 34:5-36:3.

assumptions, modifications and adjustments that chip away at the efficiency potential until the remaining savings that are deemed to be realistic and cost-effective are a small fraction of the original estimates.’²¹ As a result, a path forward is needed to identify and pursue additional cost-effective energy efficiency and increasing the low savings targets for 2017 and 2018.

Recognizing that at least some parties believe that the proposed savings levels fall short, Ameren and other parties highlight the provision in the Utility Stipulation calling for a collaborative process to explore possible additional savings to benefit customers in Ameren’s stipulation.²² Such a process is included in both stipulations, and Sierra Club appreciates Ameren’s willingness to work collaboratively with stakeholders to identify additional cost-effective energy savings. However, to address the extremely low starting point in Ameren’s Plan (driven in part by low participation rate assumptions), a more structured process is needed to ensure that increased savings levels are considered. As outlined in the Non-Utility stipulation, through stakeholder collaboration *and* independent expert analysis, ways to increase savings in the latter years of the Plan can be explored, and higher savings targets can be approved, along with an additional performance incentive.²³

To achieve the goal of MEEIA, Sierra Club respectfully recommends that the Commission adopt the process outlined in the Non-Utility Stipulation to identify and capture additional savings.

²¹ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 17:7-10.

²² Ameren’s Initial Br. at 9; DE’s Initial Br. at 2-3; NRDC’s Initial Br. at 3.

²³ Sierra Club’s Initial Br. at 9.

C. The Non-Utility Stipulation’s modifications to the multifamily low-income program will lead to a more effective program.

Sierra Club explained in its initial brief that both stipulations propose to expand Ameren’s low-income multifamily offering.²⁴ The stipulations include many of the same program modifications, including a savings target of 13.7 GWh, an overall budget of roughly \$10.75 million, a single point of contact for participants, and a 25% bonus incentive for certain measures.²⁵ However, as several parties discussed in their initial briefs, the Non-Utility Stipulation includes two additional changes that would result in a more effective program.²⁶ Specifically, under the Non-Utility Stipulation, (i) multifamily buildings with service under the Company’s 1(M) service classification would be eligible to participate, and (ii) Level 1 energy audits must include cost estimates.²⁷ By contrast, under Ameren’s proposal, only the 2(M) Small General Service Rate Classification and above would be eligible to participate and cost estimates would not be provided through audits. Sierra Club agrees with NHT, Tower Grove and other parties that these two additions included in the Non-Utility Stipulation should be adopted to provide a multifamily low-income program that will reach a greater number of low-income and affordable rental housing owners and tenants.

D. Issues concerning the DSIM.

Sierra Club supports the three-legged stool of cost recovery for energy efficiency—recovering program costs, removing disincentives, and providing performance-based incentives. Sierra Club responds briefly to three DSIM-related issues raised in the initial briefs.

²⁴ Sierra Club’s Initial Br. at 8; see also Ameren’s Initial Br. at 14 (explaining that its modifications reflect additional Low-Income Multi-family funding and programs).

²⁵ Dkt. Item No. 100 at pp. 4-7 ¶8; Dkt. Item No. 119 at p. 3 ¶2(b), pp. 5-7 ¶4, and Appendix A.

²⁶ See Renew Missouri’s Initial Br. at 19; Joint Initial Br. of National Housing Trust (“NHT”) and Tower Grove Community Development Corporation (“Tower Grove”) at 6-7; OPC’s Initial Br. at 36-37.

²⁷ *Id.*

First, the Division of Energy states that the Non-Utility Stipulation's throughput disincentive ("TD") mechanism discourages increased savings because Ameren would be compensated for the TD amount up to 133% of its initial energy savings estimate for the Plan.²⁸ However, the 133% ceiling in the TD mechanism does not limit the Plan's annual energy savings targets.²⁹ The 133% ceiling refers to recovery of the lost revenues associated with monthly projected savings per measure, and allows Ameren to recover one third above its savings estimate for each measure based on evaluation, measurement and verification.³⁰

Second, in discussing the Non-Utility Stipulation's proposed performance incentive, NRDC states that demand savings "provide no basis for a MEEIA plan," and the incentive could harm customers by "shifting focus to peak demand savings."³¹ MEEIA recognizes the value of demand savings as well as energy savings,³² and lowering demand "is one of the desired outcomes" of the programs.³³ Moreover, as Sierra Club expert Tim Woolf explained, a demand-based component of a performance incentive should not cause Ameren to shift the focus of its programs.³⁴ It simply allows the Company to earn an incentive when demand savings occur and is based, at the initial level, on the Company's own estimates of demand savings associated with its Plan.³⁵

²⁸ DE's Initial Br. at 10; *see also* NRDC's Initial Br. at 7.

²⁹ Nor does the 133% cap reflect the total projected dollar value of the portfolio regardless of whether more measures were installed than had been projected initially. *See* Staff's Initial Br. at 21, n.41.

³⁰ Dkt. Item No. 119 at 7-8, ¶ 6.

³¹ NRDC's Initial Br. at 13-14; *see also* Exhibit No. 113, Supplemental Rebuttal Testimony of Richard A. Voytas, at 3:9-17.

³² *See, e.g.*, 4 CSR 240-20.094(2) (providing demand and energy savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings). As noted in its original brief, Sierra Club supports a performance-based incentive to encourage successful programs that save energy and demand, and reach as many customers as possible. Sierra Club Initial Br. at 19.

³³ Tr. at 451:10-12 (Sierra Club witness Woolf testifying).

³⁴ *Id.* at 452:15-20.

³⁵ *See id.* at 804:17-805:2.

Finally, as Sierra Club explained in its initial brief, numerous parties in this case, including Ameren, Staff, DE, NRDC, Renew Missouri, and Sierra Club, have expressed willingness to at least explore revenue decoupling.³⁶ In its brief, the Missouri Industrial Energy Consumers argues that decoupling is unlawful and poor public policy.³⁷ While Sierra Club disagrees with MIEC's view of decoupling, the ongoing Commission investigation into the structure and operation of possible revenue decoupling mechanisms for use in Missouri presents the best forum in which to discuss the issues MIEC raises. Sierra Club strongly supports the Commission's pending investigation and continues to believe that it could result in a simple, consensus approach to addressing and overcoming the throughput disincentive for utilities in a manner that protects consumers.

Dated this 26th day of August, 2015.

Respectfully submitted,

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³⁶ Sierra Club's Initial Br. at 20.

³⁷ MIEC's Initial Br. at 5-7.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and electronically mailed to all counsel of record on this 26th day of August, 2015.

/s/ Jill Tauber
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